

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Southeastern Human Services, Inc.)	
	District 8, Map 34, Control Map 34, Parcels 52,)	
	52.01 and 52.02)	Hardeman County
	<i>Exemption</i>)	

INITIAL DECISION AND ORDER

Statement of the Case

These are appeals from denials of applications for exemption of the subject parcels from ad valorem taxation. The appellant, Southeastern Human Services, Inc. ("SHS"), filed an application for exemption of Parcel No. 052.01 with the State Board of Equalization ("State Board") on January 20, 2003. On October 15 of that year, SHS filed another application for exemption of that parcel and applications for exemption of Parcel Nos. 052.00 and 052.02 with the State Board.¹ By letter dated February 7, 2005, (former) State Board staff attorney Regan Cothron notified the applicant of the denials of these applications the grounds that:

...[T]he property is not presently owned by an exempt institution...The corporation is essentially the alter ego of Louise Byars and does not function apart from Ms. Byars. In addition, the property is not an eligible housing project pursuant to T.C.A. section 67-5-207.

SHS timely appealed this initial determination to the State Board pursuant to Tenn. Code Ann. section 67-5-212(b)(2). The undersigned administrative judge conducted a hearing of this matter on October 27, 2005 in Jackson. SHS was represented by Donald D. Glenn, Esq., of Pentecost, Glenn & Rudd, PLLC (Jackson). Hardeman County Assessor of Property Norma B. Kirk appeared on her own behalf.

Findings of Fact and Conclusions of Law

SHS, originally known as Threet's Care Home, Inc., was chartered as a mutual benefit corporation in this state in 1991.² Though not recited in its charter or bylaws, the primary

¹At the time of the original application, SHS was apparently unaware that the subject improvements were situated on three separate parcels (i.e., Parcel Nos. 052.00, 052.01, and 052.02). Under these circumstances, the administrative judge will treat all three applications as having been filed on January 20, 2003.

²The incorporators were Fred Threet, Jr. and Louise Byars (formerly known as Nettie Louise Threet).

purpose of the organization is to provide housing and round-the-clock care for mentally handicapped adults. Internal Revenue Service Form 990 (2002), Part III.

SHS does business as “Country View Estates” – the name by which the two *mental health supportive living facilities* on the subject parcels are known. These group homes, located on an approximately two-acre site in Toone, have apparently been in existence since the mid-Eighties. Both facilities are currently licensed by the Tennessee Department of Mental Health and Developmental Disabilities.³

On November 5, 2001, SHS acquired the three parcels in question (as improved) for a total of \$700,000.⁴ This purchase was financed mainly by a direct “community facility” loan from the Rural Housing Service of the United States Department of Agriculture (USDA) pursuant to Section 515 of the National Housing Act of 1949.⁵ There is a substantial balance due on the 25-year loan; in fact, as of March 7, 2005, a delinquency in the amount of \$10,564.90 had accrued.⁶

Until March of 2005, when she was diagnosed with cancer, Louise Byars served as SHS’s executive director. For whatever reason, it was not until 2003 that she applied for exemption of the subject properties on the organization’s behalf. Ms. Byars informed the State Board in a letter dated October 23, 2003 that:

...(SHS) does not rely upon federal or state monies to operate⁷
nor does it rely upon private sector grants. All monies received
are for rent and accommodations for 50+ mentally challenged
adults....

Ms. Byars’ successor, her daughter Dana Jones, appeared as a witness for SHS at the hearing. According to her testimony, all of SHS’s current directors and officers serve without compensation; and none of them is employed by the corporation. Ms. Jones, who is trained in the mental health care field, supervises a staff of 25-30 employees that includes certified nurse assistants. She earns a monthly salary of \$2,000 – half of what Ms. Byars was making at the time of her departure.

³The capacities of Country View Estate #1 and #2 are 46 and 15 beds, respectively.

⁴The sellers identified on the two warranty deeds were Louise Byars (Parcel Nos. 052.00 and 052.02) and Hope Hall Center, Ltd. Thus the subject properties were not eligible for tax-exempt status under the prior ownership.

⁵In addition to the \$675,000 USDA loan, SHS obtained a guaranteed loan in the amount of \$75,000 from Union Planters Bank of Jackson.

⁶The terms of a Workout Agreement between SHS and USDA called for the organization to file these appeals by May 7, 2005. The appeals were received by the State Board three days earlier.

⁷Presumably, Ms. Byars meant that SHS derived no part of its operating income from the government. A federal agency (USDA) had, of course, facilitated the corporation’s acquisition of Country View Estates.

By Ms. Jones' estimation, upwards of 60% of the Country View Estate residents are low-income persons. The only source of income for many of those people, she pointed out, is their Social Security benefits. All told, SHS received \$612,450 from its tenants as "partial payment" for residential care services (e.g., lodging; meals; assistance with medication) in 2002 – slightly less than the total expenses reported during that period. Internal Revenue Service Form 990 (2002), Part VII, line 93. The organization does not solicit contributions, gifts, or grants from the public at large. As Ms. Jones put it, SHS must "pinch pennies" to make ends meet.

Subject to enumerated conditions, Tenn. Code Ann. section 67-5-207 exempts from taxation property which is owned by Tennessee nonprofit corporations and used for the permanent housing of low-income elderly and/or handicapped persons. Eligibility for such exemption is limited to projects which are federally subsidized through one of the affordable housing programs specified in the statute. One of those is the USDA's aforementioned "community facility" loan/grant program. Therefore, Mr. Glenn asserted, SHS is entitled to exemption of Country View Estates. Alternatively, he contended that the organization qualifies for exemption of the subject parcels as a "charitable institution" under the general provisions of Tenn. Code Ann. section 67-5-212.⁸

In Tennessee, contrary to most other states, property tax exemptions are liberally construed in favor of religious, charitable, scientific, and nonprofit educational institutions. See, e.g., Youth Programs, Inc. v. State Board of Equalization, 170 S.W.3d 92 (Tenn. Ct. App. 2004). Nonetheless, as the party appealing from the initial determination on its applications for exemption, SHS has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

That Ms. Byars has played a major role in the affairs of SHS since its inception is obvious; however, the evidence of record does not seem to bear out the State Board designee's determination that SHS lacks an identity separate and apart from her."⁹ In the opinion of the administrative judge, this corporation is a *charitable institution* as broadly defined in Tenn. Code Ann. section 67-5-212(c): i.e., a "nonprofit organization or association devoting its efforts and property, or any portion thereof, exclusively to the improvement of human rights and/or conditions in the community." But property which is leased or rented for residential purposes is generally not exemptible under that section. See Tenn. Code Ann. section 67-5-212(a)(3); Tusculum College v. State Board of Equalization, 600 S.W.2d 739 (Tenn. Ct. App. 1980).

⁸Tenn. Code Ann. section 67-5-207(e) provides that "[n]othing in this section shall be construed to preclude the application of section 67-5-212 to **transitional** or **temporary** housing that qualifies as a charitable use of property under that section." [Emphasis added.]

⁹It should be noted that Ms. Cothron, who is no longer employed by the State Board, did not attend or participate in the hearing of this matter.

As for the appellant's claim of exemption under section 67-5-207, it is true that SHS's barebones charter does not expressly prohibit compensation of directors and officers for their services *in those capacities* (as required by subsection (b)(1)). Yet there is no indication that any such payment has ever occurred; and, as Mr. Glenn pointed out, the corporate bylaws do state that any compensation paid to "**employees**, directors or officers will not exceed a value which is reasonable and commensurate with the duties and working hours associated with such **employment** and with the compensation ordinarily paid persons with similar positions and duties." [Emphasis added.] Moreover, the subject property appears to meet all other conditions for exemption set forth in the statute. Hence, particularly in light of the longstanding "liberal construction" doctrine, the administrative judge recommends the grant of such exemption.¹⁰

Consistent with the provisions of Tenn. Code Ann. section 67-5-212(b)(3), the effective date of exemption is January 1, 2003.

Order

It is, therefore, ORDERED that the subject parcels (as improved) shall be exempt from taxation as of January 1, 2003.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "**must be filed within thirty (30) days from the date the initial decision is sent.**" Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal "**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**"; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

¹⁰As soon as practicable, SHS's charter should be amended to provide that the corporate officers and directors will serve without compensation.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 24th day of January, 2006.

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Donald D. Glenn, Esq., Pentecost, Glenn & Rudd, PLLC
Southeastern Human Services, Inc.
Norma B. Kirk, Hardeman County Assessor of Property

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